

Appl. No.: 10/076,029
Filed: February 12, 2002
Page 12

REMARKS/ARGUMENTS

This is a full and timely response to the non-final Office Action dated April 7, 2004. Upon entry of this response, Claims 1-9, 32-36, 49-52, and 71-73 remain pending in the application.

Response to Rejections under 35 U.S.C. §103(a)

The Examiner has rejected Claims 1-9, 32-36, 49-52, and 71-73 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. US 2001/0047285 to Borders et al. (hereafter '*Borders*') in view of the article "E-Business in the New Beverage Marketplace" (hereafter 'the E-Business article'). For the reasons set forth below, Applicants respectfully assert that a *prima facie* case of obviousness has not been established for the above-referenced claims. Accordingly, Applicants respectfully request that the current rejection of Claims 1-9, 32-36, 49-52, and 71-73 be withdrawn.

Independent Claims 1, 32, 49, 71

To establish a *prima facie* case of obviousness, three basic criteria must be met. These criteria are as follows: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP §2143.

For the reasons set forth below, Applicants respectfully assert that the cited references (i.e. *Borders* and the E-Business article) do not teach or suggest all of the limitations of independent Claims 1, 32, 49, and 71. In addition, Applicants respectfully assert that there was no suggestion or motivation to combine *Borders* and the E-Business article as suggested by the Examiner.

ATL01/11658081v4

Appl. No.: 10/076,029
Filed: February 12, 2002
Page 13

Independent Claim 1

Independent Claim 1 is directed to a computer-readable medium for scheduling delivery vehicle visits to a customer. This claim is reproduced below for the Examiner's convenience:

1. A computer-readable medium for scheduling delivery vehicle visits to a customer, said computer-readable medium comprising computer-executable instructions for performing the steps of:
 - (1) receiving a single request from a user that a first delivery vehicle visit be made to said customer within a particular time window on a first day, and that a second vehicle delivery visit be made to said customer within said particular time window on a second day;
 - (2) determining whether to schedule said first delivery vehicle visit within said particular time window on said first day;
 - (3) determining whether to schedule said second delivery vehicle visit within said particular time window on said second day;
 - (4) in response to a combination of: (a) said request, and (b) a determination in Step (2) that said first delivery vehicle visit should be scheduled within said particular time window on said first day, scheduling said first delivery vehicle visit to be made within said particular time window on said first day; and
 - (5) in response to a combination of: (a) said request, and (b) a determination in Step (3) that said second delivery vehicle visit should be scheduled within said particular time window on said second day, scheduling said second delivery vehicle visit to be made within said particular time window on said second day.

It is respectfully submitted that neither *Borders* nor the E-Business article teaches or suggests all of the limitations of Claim 1, above. For example, these references do not teach or suggest: (1) receiving a single request from a user that a first delivery vehicle visit be made to a customer within a particular time window on a first day, and that a second vehicle delivery visit

ATL01/11658081v4

Appl. No.: 10/076,029
Filed: February 12, 2002
Page 14

be made to the customer within the particular time window on a second day; (2) determining whether to schedule the first delivery vehicle visit within the particular time window on the first day; (3) determining whether to schedule the second delivery vehicle visit within the particular time window on the second day; (4) scheduling the first delivery vehicle visit to be made within the particular time window on the first day; and (5) scheduling the second delivery vehicle visit to be made within the particular time window on the second day.

In the Office Action, the Examiner notes that *Borders* discloses a scheduling system that allows customers to schedule the delivery of an item each time an item is ordered. The Examiner also notes that, unlike the present invention, "*Borders* does not expressly teach that multiple, reoccurring deliveries (e.g., deliveries on different days, but during the same particular time window) may be scheduled through one request." The Examiner, however, asserts that it would have been obvious in view of the *E-Business* article to enhance the *Borders* system with the ability to provide customers with the option of requesting reoccurring deliveries of the same items during the same particular time window.

Applicants note that *Borders* appears to teach scheduling a single delivery within a single time window. Applicants also note that the *E-Business* article appears to teach that some grocers have used "automatic replenishment programs that provide for weekly or bi-weekly delivery of specified items." As an example, the article states that "repeat customers can get regular deliveries of Tab, for instance." The *E-Business* article does not discuss allowing customers to specify when the various deliveries would be made.

In summary, the *E-business* article simply describes a milkman-type arrangement, where customers can request to be added to standard delivery routes, but are not provided with the ability to specify when any of the deliveries would be made. Because, in this type of arrangement, the company making the deliveries would not be obligated to make time-window specific deliveries to the various customers, the company would be able to change their delivery routes freely to accommodate various factors such as: (1) changes to the number of customers on the route; (2) changes to the number of delivery trucks available on a given day; (3) inventory changes; and (4) changes to the number of delivery drivers available on a given day.

ATL01/11658081v4

Appl. No.: 10/076,029
Filed: February 12, 2002
Page 15

In light of the above, neither *Borders* nor the E-business article teaches or suggests a computer readable medium comprising computer-executable instructions for: (1) receiving a single request from a user that a first delivery vehicle visit be made to said customer within a particular time window on a first day, and that a second vehicle delivery visit be made to said customer within said particular time window on a second day; (2) determining whether to schedule said first delivery vehicle visit within said particular time window on said first day; (3) determining whether to schedule said second delivery vehicle visit within said particular time window on said second day; (4) in response to a combination of: (a) said request, and (b) a determination in Step (2) that said first delivery vehicle visit should be scheduled within said particular time window on said first day, scheduling said first delivery vehicle visit to be made within said particular time window on said first day; and (5) in response to a combination of: (a) said request, and (b) a determination in Step (3) that said second delivery vehicle visit should be scheduled within said particular time window on said second day, scheduling said second delivery vehicle visit to be made within said particular time window on said second day.

Furthermore, there would have been no motivation to combine the very precise time-window specific delivery system taught in *Borders* with the more flexible system described in the E-business article. This lack of motivation would have been compounded by the substantial technical complexities that would have been associated with modifying the *Borders* system to perform as claimed in the present application. More particularly, because of the already complex nature of scheduling just a single delivery to be made within a particular time window, it would not have been obvious to modify the system of *Borders* to: (1) receive a single request from a user that a first delivery vehicle visit be made to the customer within a particular time window on a first day, and that a second vehicle delivery visit be made to the customer within said particular time window on a second day, and then (2) schedule the first and second delivery vehicle visits to be made within the particular time window (but on different days), as requested by the customer. This is made apparent by the complex technical and logistical steps that *Borders* teaches as being required to schedule a single delivery to be made within a single time window on a specified day. Such steps are discussed at paragraphs 45 – 93 of *Borders*.

ATL01/11658081v4

Appl. No.: 10/076,029
Filed: February 12, 2002
Page 16

Thus, for the reasons set forth above, Applicants respectfully assert that Claim 1 is patentable over the prior art cited by the Examiner. Accordingly, Applicants respectfully request that the current rejection of this claim be withdrawn.

Independent Claims 32 and 49

Independent Claim 32 is a method claim that corresponds generally to independent Claim 1, which is directed to a computer readable medium. Similarly, Independent Claim 49 is a system claim that corresponds generally to independent Claim 1. Accordingly, for the reasons set forth above in regard to Claim 1, Applicants respectfully assert that Claims 32 and 49 are patentable over the prior art cited by the Examiner. Accordingly, Applicants respectfully request that the current rejection of these claims be withdrawn.

Independent Claim 71

Independent Claim 71 is a computer readable medium claim that corresponds generally to independent Claim 1, except that Claim 71 covers a computer-readable medium for scheduling customer visits to a customer, rather than delivery vehicle visits. Thus, for the reasons set forth above in regard to Claim 1, Applicants respectfully assert that Claim 71 is patentable over the prior art cited by the Examiner. Accordingly, Applicants respectfully request that the current rejection of this claim be withdrawn.

Dependent Claims 2-9, 33-36, 50-52, and 72-73

Claims 2-9, 33-36, 50-52, and 72-73 depend, respectively, from independent Claims 1, 32, 49, and 71, and include all of the limitations of their respective independent claims plus additional limitations that are not taught or suggested by the prior art. For instance, dependent Claim 2 provides that the computer-readable medium includes instructions for determining whether it is possible to make the first and second delivery visits within the same particular time window on a first and a second day, respectively. Similarly, dependent Claim 3 provides that the computer-readable medium includes instructions for determining whether it would be economically desirable to make first and second delivery visits within the same particular time

ATL01/11658081v4

Appl. No.: 10/076,029
Filed: February 12, 2002
Page 17

window on a first and a second day, respectively. Furthermore, dependent Claim 7 specifies that the computer readable medium comprises computer executable instructions for performing various claimed steps in real time. Thus, for the reasons set forth above, Applicants respectfully assert that dependent Claims 2-9, 33-36, 50-52, and 72-73 are patentable over the prior art cited by the Examiner. Accordingly, Applicants respectfully request that the current rejection of these claims be withdrawn.

Response to Rejections under the Doctrine of Obviousness-Type Double Patenting

The Examiner has rejected Claims 3 and 73 under the doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 22, 29, 33, 53, 56, and 59 of Applicant's U.S. Patent No. 6,701,299 in view of the article "E-Business in the New Beverage Marketplace." Applicants respectfully request deferment of a final decision regarding a potential double patenting rejection until any allowable subject matter has been identified.

ATL01/11658081v4

Appl. No.: 10/076,029
Filed: February 12, 2002
Page 18

CONCLUSION

In view of the remarks presented above, it is respectfully submitted that Claims 1-9, 32-36, 49-52, and 71-73 of the application are now in condition for allowance. The Examiner is encouraged to contact Applicants' undersigned attorney at (404) 881-7728 to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

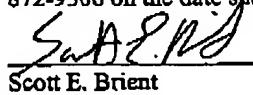


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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the US Patent and Trademark Office at Fax No. (703) 872-9306 on the date shown below.



Scott E. Brient

August 9, 2004
Date